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| 09/687,691 | 10/13/2000 | Anthony J. Baerlocher | 0112300/483 | 7698 |

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EXAMINER

COBURN, CORBETT B

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3714

DATE MAILED: 08/07/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/687,691

Applicant(s)

BAERLOCHER, ANTHONY J.

Examiner

Corbett B. Coburn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35-37 is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 6, 12-18, 21, 22 & 24-28, are rejected under 35 U.S.C. 103(a) as being unpatentable over Fey (*Slot Machines*, Liberty Belle Books).

Claims 1 & 18: On page 88, Fey shows a Big Six slot machine from 1904. The Big Six has a controller with means for determining the amount of a player's wager including any component of the player's wager. (Wagers of potentially different amounts on each payline were dropped through different slots.) There is a display device (the wheels) connected to the controller. When the player pulled the handle after depositing the bet, the wheels were spun – this is a game adapted to be displayed to the player on the display device. There are a plurality of awards. The wager includes a plurality of different types of wagerable components – players may wager on either or both wheels (analogous to paylines) and on any or all of six colors depicted on each wheel. The controller requires the player to select an amount for each of the wagerable components to operate the game – the game will not operate without coins being bet on one or more paylines. This is selecting the amount for each wagerable component. The player-selected wager per payline and a player-selected number of paylines wagered must, by definition, form an

overall wager. The overall wager is required to initiate the game (i.e., spin the wheels) to be eligible for winning.

The game has odds of winning a designated award. The odds change whenever either one or both of the different wagerable components change. A player could bet up to six coins on either or both wheel. Each coin corresponds to a color on the wheel. If the player bet one coin, the odds were lower than if the player bet more coins.

As noted above, the Big Six has a controller. The controller appears to be mechanical. Microprocessor controllers are well known to the art. Fey teaches that the microprocessor controllers have fewer moving parts than mechanical controllers (page 210). This makes microprocessor controllers easier to maintain than mechanical controllers. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used a microprocessor controller in order to have fewer moving parts, thus making the machine easier to maintain.

The Big Six also fails to teach the odds of winning changing linearly when either one or both of the wagerable components change. This is because the colors are not evenly distributed on the wheels. For instance, there appear to be more red segments than black. Obviously, the proportion of red to black (and other colors) can be adjusted to achieve the desired odds. Setting the odds is well known to the art and determines the profitability of the machine. It would have been obvious to one of ordinary skill in the art at the time of the invention to have changed the distribution of the colored segments to have the odds of winning change linearly in order to set the odds to achieve the desired level of profitability.

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Claim 2: The odds of winning increase as the amount of any component of the wager increases. The more coins wagered on a particular wheel (payline), the greater the chance of winning. The more wheels wagered upon, the greater the chance of winning.

Claims 3 & 6: The Big Six machine teaches the invention substantially as claimed. The Big Six machine has multiple reels each with a payline and the odds of winning a payout increase when the player increases the amount wagered on each payline. The Big Six machine has two paylines and six different colors. Increasing the bet on any payline increases the odds that the player will receive a payout. The player may bet different amounts on the paylines – for instance, the player can bet four coins on the left reel and three on the right.

Claims 12, 13, 15 & 16: The Big Six teaches a gaming machine with a plurality of reels and paylines. There is a smallest machine allowable wager on a payline (one coin) and a largest machine allowable wager on a payline (6 coins). A player wagering the smallest machine allowable on one of the paylines has a chance to win the maximum payout or jackpot.

While the reference does not show the pay table for the Big Six, the game is essentially a two-wheel version of the Klondike discussed in the previous office action. The Klondike includes a plurality of awards, one of which is a jackpot award. Jackpots are well known to attract players. It would have been obvious to one of ordinary skill in the art at the time of the invention to have a plurality of awards, one of which is a jackpot award in order to attract players.

The Big Six also fails to teach the payout ratio of the amount wagered versus odds of winning for the jackpot award is constant regardless of the number of paylines wagered and the amount wagered per payline. This is because the colors are not evenly distributed on the wheels. For instance, there appear to be more red segments than black. Obviously, the proportion of red to black (and other colors) can be adjusted to achieve the desired odds. Setting the odds is well known to the art and determines the profitability of the machine. It would have been obvious to one of ordinary skill in the art at the time of the invention to have the payout ratio of the amount wagered versus odds of winning for the jackpot award is constant regardless of the number of paylines wagered and the amount wagered per payline in order to set the odds to achieve the desired level of profitability.

Claim 14: The Big Six teaches the odds of winning increase as the player's wager increases.

Claim 17: The Big Six teaches the invention substantially as claimed. The Big Six slot machine does not, however, have a progressive jackpot. Progressive jackpots are extremely well known in the art. These jackpots can grow to significant sizes and tend to attract more customers. In addition to the Big Six, Fey also teaches a Megabucks progressive jackpot gaming system (page 213). It would have been obvious to one of ordinary skill in the art at the time of the invention to have used a progressive jackpot so that the jackpot could grow to significant sizes and attract more customers.

Claims 21 & 22: The Big Six game includes the production of a plurality of symbols (different colors) on the wheel and the award is dependent on the production on a

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predetermined symbol (color) on a payline. The winning symbol (color) is dependent on the number of wagered paylines and the amount wagered on the paylines.

3. Claims 4, 5, 8, 9, 10, 11 & 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Fey as applied to claims 3, 6, or 18 above, in view of Travis et al. (US patent Number 5,380,007).

Claims 4, 8, 10 & 19: Fey's Big Six teaches the invention substantially as claimed. The Big Six does not, however, specifically teach making a number of attempts at randomly producing the award depending on the amount wagered on the payline or the number of paylines wagered upon. Doing so is the same as treating each amount wagered as a separate game or separate lottery ticket. Travis teaches accepting a bet on a lottery game and automatically replaying the game for a number of times to reflect the initial amount bet. (Col 4, 41-56) Thus if a player deposits a bet of \$1.00 and the minimum bet is 25¢, then the game will be played four times. This gives the player the impression that he is getting more for his money because instead of one spin, there are four. This would tend to increase player satisfaction. It would have been obvious to one of ordinary skill in the art at the time of the invention to have made a number of attempts at randomly producing the award depending on the amount wagered on the pay line in order to give players the impression that they are getting more for their money, thus increasing player satisfaction.

Claims 5, 9 & 11: The odds constant that affects the number of spins or the chance of winning with the Big Six machine is 1. The use of methods to generate the desired odds are well known in the art – the art primarily consists of this study. Only when the odds are in the desired range can a casino remain profitable. It would have been obvious to

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one of ordinary skill in the art to have used an odds constant to affect the odds of winning in order to generate the desired odds necessary to maintain profitability.

4. Claims 7, 23, 25-27, 29 & 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fey as applied to claim 6, 18 or 25 above, in view of Wurz et al. (US Patent Number 6,334,612).

Claims 7, 23, 25-27 & 29: Fey teaches the invention substantially as claimed. Fey does not, however, teach a bonus round triggered by a bonus condition in which the player can win an award. Such bonus rounds are well known in the art. They provide excitement to the player. Wurz teaches a gaming machine with a bonus round triggered by a bonus condition in which the player can win an award. (Col 4, 61-67) It would have been obvious to one of ordinary skill in the art at the time of the invention to have added a bonus round triggered by a bonus condition to the Big Six machine (as suggested by Wurz) in which the player can win an award in order provide excitement to the player. The Big Six teaches that the odds of winning a game increases with the number of paylines bet and the amount wagered on each payline. Obviously, if a bonus round were a payout of the base game, then the odds of winning entry into the bonus round would increase with the number of paylines bet and the amount wagered on each payline. As with all slot machines, the odds of winning increase when the number of paylines bet increases. Obviously, therefore, the odds of winning in the bonus round (i.e., opportunities to achieve an award) increases as the number of paylines increases.

Claims 30, 32 & 34: The odds constant that affects the chance of winning with the Big Six machine is 1. The use of methods to generate the desired odds are well known in the

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art – the art primarily consists of this study. Only when the odds are in the desired range can a casino remain profitable. This would include odds within the bonus round. It would have been obvious to one of ordinary skill in the art at the time of the invention to use an odds constant to determine the chance of winning a payout, triggering the bonus game, or the number of spins in the base or bonus game to affect the odds of winning in order to generate the desired odds necessary to maintain profitability.

Claims 31 & 33: Fey teaches the invention substantially as claimed. The predetermined probability of winning on a Big Six machine is dependent on the amount wagered on the paylines. As pointed out above, bonus rounds are common in the art. The bonus round often consists of playing the same type of game as the base game. This allows a casino to have a bonus game without having to buy a machine with additional hardware. This reduces costs. It would have been obvious to one of ordinary skill in the art at the time of the invention to have made the predetermined probability of triggering the bonus round and the probability of winning the bonus round dependent on the amount wagered on the paylines in order to have the bonus round match the underlying game, thus reducing costs by allowing a casino to have a bonus game without having to buy a machine with additional hardware.

Allowable Subject Matter

5. Claims 35-37 are allowed.

Response to Arguments

6. Applicant's arguments filed 21 July 2003 have been fully considered but they are not persuasive.

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7. Applicant explains that there are two “components” to the overall wager – the number of paylines bet and the amount bet on each payline. Applicant then contends that the Big Six fails to teach wagering that include a plurality of different types of wagerable components. Clearly this is incorrect. As Applicant points out, the wagerable components consist of payline and amount wagered. The Big Six has two paylines (i.e., one for each wheel) and players can bet up to six coins on each payline. Thus there are a plurality of types of wagerable components. But, even if, as Applicant argues, Big Six is two separate games in one cabinet, each of the games has a plurality of types of wagerable components. Each of the games has a payline upon which some amount may be bet.

8. Applicant argues that Big Six does not disclose wager per payline. This is obviously not correct. Each wheel has a pointer. As clearly described in the discussion of claims 1 and 18 above, this pointer is the payline. A player may wager from one to six coins on this payline. Applicant appears to confuse color or wheel indicia with “payline”. While understandable, this is not how Examiner has interpreted the Big Six.

9. Applicant argues that Big Six does not require the player to select an amount for each of the wagering components in order to operate the game. This is not the case. If the player decides not to wager on one of the paylines (i.e., wheels), this is reflected by the player not activating the handle on that reel. This means that the player does select the amount wagered on each component prior to the initiation of the game.

10. Applicant’s arguments regarding “overall wager” have been addressed above.

11. Applicant argues that adjusting the odds of a gaming device is a “fertile subject for invention” is nothing more than a statement that Applicant believes the invention to be

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patentable. Yet the nature of the gambling business is such that anyone who wishes to engage in it must know how to figure the odds and adjust them to a desired level of payout. Any practitioner of the art who does not know how to do so will soon go broke. Thus, setting the odds on a slot machine to a desired level of profitability is a basic skill that must be possessed by anyone practicing this art.

12. Applicant's argument concerning amended claim 25 has been addressed above.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fey teaches other similar devices on pages 92-93. Applicant is particularly directed to the Mills 1899 Duplex which apparently functions like the Big Six but only has one handle and to the Mills 1906 Big Six that has linear odds.

14. This is an RCE of applicant's earlier Application No. 09/687691. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

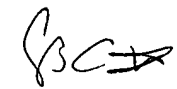
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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corbett B. Coburn whose telephone number is (703) 305-3319. The examiner can normally be reached on 8-5:30, Monday-Friday, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



cbc

July 31, 2003



JESSICA HARRISON
PRIMARY EXAMINER